Supreme Court, U.S.
FILED
DEC 17 1971
CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-797

MICHAEL PUGLIA,
Plaintiff—Petitioner,

vs.

THE HON. JOHN P. COTTER, THE HON. SIDNEY A. JOHNSON AND JOHN P. EVANS,
Defendants—Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

JURISDICTIONAL STATEMENT

JOSEPH F. TROTTA,
900 Chapel Street,
New Haven, Conn.,
Attorney for Plaintiff—Petitioner

THE MACK CO., NORTH HAVEN, CONN.

INDEX

	PAGE
Opinions Below	2
Jurisdiction	2
Statutes Involved	3
Questions Presented	3
Statement of the Case	4
The Questions Are Substantial	5
Conclusion	7

AUTHORITIES CITED

CITATIONS	PAGE
Dombrowski vs. *Pfister*, 380 U.S. 479	3
Wisconsin vs. *Constantineau*, 400 U.S. 433	3, 6
Zwickler vs. *Koota*, 389 U.S. 241	3, 5, 6
UNITED STATES CONSTITUTION	
Const. U.S. Amend. I	5, 6
Const. U.S. Amend. IV	5, 6
Const. U.S. Amend. V	5, 6
Const. U.S. Amend. XIII	5, 6
Const. U.S. Amend. XIV	5, 6
STATUTES	
28 U.S.C. 1254	3
28 U.S.C. 1343	1, 5
28 U.S.C. 1651	3
28 U.S.C. 1983	5
28 U.S.C. 2281	2
28 U.S.C. 2282	2
42 U.S.C. 1983	1
Conn. Gen. Stat. Rev. 1969 54-47	2, 3, 4
Conn. Gen. Stat. Rev. 1969 54-47A	2, 3, 4

In the

Supreme Court of the United States

OCTOBER TERM, 1971

No.

MICHAEL PUGLIA,
Plaintiff—Petitioner,

vs.

THE HON. JOHN P. COTTER, THE HON. SIDNEY A. JOHNSON AND JOHN P. EVANS,
Defendants—Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

JURISDICTIONAL STATEMENT

Michael Puglia prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this case on September 27, 1971 denying jurisdiction under 28 U.S.C. 1343 (3) and 42 U.S.C. 1983.

OPINIONS BELOW

The opinion of the Court of Appeals, as yet unreported, is appended hereto. (App. p. 25a) The opinion of the U. S. District Court for Connecticut also unreported as yet is also appended hereto. (App. p. 23a)

JURISDICTION

Suit was brought by petitioner in the Federal District Court of Connecticut alleging that Sections 54-47, 54-47A of the Connecticut General Statutes, Revision of 1969 as amended, violated his constitutional guarantees of free speech, freedom from unreasonable searches and seizures, freedom from self-incrimination, freedom from involuntary servitude and freedom from abridgement of constitutional privileges and immunities. (App. p. 3a)

He seeks to enjoin the defendants from enforcing the above mentioned sections of the Connecticut General Statutes against him, a declaratory judgment, and the convening of a three-judge statutory court to determine the constitutionality of these statutes, under 28 U.S.C. 2281 and 28 U.S.C. 2282.

On application of the petitioner the U. S. District Court for Connecticut issued a Temporary Restraining Order on April 20, 1971. On May 4, 1971 defendant's motion to dismiss was granted. The court's decision was that it had no jurisdiction and no substantial constitutional question was involved. (App. p. 23a) Petitioner appealed to the United States Court of Appeals for The Second Circuit which decided on the day argued, September 27, 1971, to affirm the district court's decision. (App. p. 25a)

Jurisdiction of this appeal is conferred by 28 U.S.C. 1254, and 28 U.S.C. 1651. The following cases sustain the court's jurisdiction: *Zwickler* vs. *Koota*, 389 U.S. 241; *Wisconsin* vs. *Constantineau*, 400 U.S. 433; *Dombrowski* vs. *Pfister*, 380 U.S. 479, and the Constitution of the United States.

STATUTES INVOLVED

The statutes involved are Connecticut General Statutes, Revision of 1969, Sections 54-47 and 54-47A, appended hereto. (App. p. 18a).

QUESTIONS PRESENTED

1. Should the district court and appellate court have abstained from deciding the constitutional questions squarely involved under the Const. of the U.S. on the basis that jurisdiction did not exist, and, or a substantial constitutional question had not been raised?

2. Do Sections 54-47 and 54-47A of the Connecticut General Statutes Revision of 1969 as amended violate:

(A) The right to free speech,

(B) The right to freedom from unreasonable searches and seizures,

(C) The right to freedom from self-incrimination,

(D) The right to freedom from involuntary servitude,

(E) Freedom from abridgement of constitutional privileges and immunities?

STATEMENT OF THE CASE

Petitioner commenced this action for an injunction and declaratory action when on April 14, 1971 he was served with a subpoena (App. p. 16a) to appear before a judicial investigation to testify regarding his knowledge, involvement, or interest relative to gambling and crimes of violence.

The appearance date was to have been April 19, 1971.

The investigation was being conducted by John P. Evans, Chief Circuit Court Prosecutor, before The Hon. Sidney A. Johnson, State Referee, both of whom are administered by John P. Cotter, Chief Court Administrator for the State of Connecticut (App. pp. 4a, 5a) all of whom are named defendants in this action.

Authority for the investigation was Connecticut General Statutes Revision of 1969, Sections 54-47 and 54-47A. (App. pp. 18a, 19a)

A two day postponement from the original appearance date of April 12, 1971 was obtained by petitioner's counsel. (App. p. 5a, Comp. 11)

On April 20, 1971 a Temporary Restraining Order was obtained from the United States District Court, District of Connecticut, and a hearing held on April 26, 1971, on the show cause order.

The Connecticut State Court proceedings ordered the petitioner to appear and testify in accordance with the subpoena (App. pp. 16a, 17a) issued in accordance with the authority granted by the Connecticut General Statutes, Revision of 1969, which provide for the conferring of immunity from prosecu-

tion with subsequent contempt citations for refusal to testify after a conferring of immunity. (App. pp. 18a-21a)

The investigation had already been in session six months prior to petitioner's being subpoenaed. (App. p. 5a, Comp. 7)

Witnesses who appeared and invoked the Fifth Amendment Rights were granted immunity and subsequently cited for contempt for failure thereafter to testify. (App. p. 6a, Comp. 14)

The petitioner reasons that since the subpoena (App. pp. 16a, 17a) called for testimony of his involvement, had he availed himself of his Fifth Amendment Rights, immunity would have been conferred and a further pursuance of his Fifth Amendment Rights would have resulted in contempt proceedings. (App. p. 6a, Comp. 14) The respondents have admitted this in their brief, in essence.

The plaintiff's appearance and testimony in absence of any Fifth Amendment Rights were violative of his rights under the Const. U.S. Amends. 1, 4, 13 and 14. Petitioner does not seek to enjoin a State prosecution, since none was pending, only future ones.

THE QUESTIONS ARE SUBSTANTIAL

This appeal raises questions regarding the Federal Court's jurisdiction to entertain suits brought under 28 U.S.C. 1343 (3) and 42 U.S.C. 1983. This court held in *Zwickler* vs. *Koota*, 389 U.S. 247, that 28 U.S.C. 1343 (3) gave the district courts original jurisdiction over any action commenced against any person who attempted the deprivation of any rights, privileges or immunity secured by the Constitution.

This Court said in *Zwickler* p. 248 (*supra*) and again in *Wisconsin* vs. *Constantineau*, 400 U.S. 433 "We yet like to believe that whenever the Federal courts sit human rights under the Constitution are always a proper subject for adjudication, and that we have not the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum." This Court also said in *Zwickler* p. 254 (*supra*) "A Federal District Court has the duty to decide the appropriateness and the merits of the declaratory request irrespective of its conclusion as to the propriety of the issuance of the injunction."

Were Puglia restricted to learn his constitutional rights only after he risked prosecution in the State Courts, the criminal trial, and appeal to the State's highest court, it would surely delay the exercise of his rights, exhaust his finances, exact physical and mental tolls making the determination of his rights a prohibitive expense and mockery of justice. Delay in the exercise of guaranteed freedoms is often their destruction or subversion.

This appeal presents constitutional questions which have never been raised or decided by this Court or any other federal court in the land, namely whether the "Immunity Statute" is an unreasonable search and seizure of a person's mind in violation of Const. U. S. Amend. IV, and/or whether they subject one to involuntary servitude in violation of Const. U.S. Amend. XIII and/or further violate Const. U.S. Amend. I, along with violations of Const. U.S. Amend. V and XIV.

CONCLUSION

The appeal presents questions yet unanswered by this Court and the recurrent use of State and Federal "Immunity Statutes" requires definition due to their widespread and popular current usage by State and Federal Authorities in all areas of governmental investigations.

Respectfully submitted.

JOSEPH F. TROTTA,
Counsel for Petitioner,
900 Chapel Street,
New Haven, Conn. 06510,
Tel. Area Code (203) 787-6756.

APPENDIX

INDEX

Relevant Docket Entries	3a
Verified Complaint With Affidavit Attached	3a
Motion for Preliminary Injunction and Affidavit	14a
Subpoena of Plaintiff	16a
Connecticut General Statutes 54-47, 54-47A	18a
Motion for Dismissal of Defendants, Hon. John P. Cotter and Hon. Sidney A. Johnson	21a
Motion to Dismiss of Defendant John P. Evans	22a
Ruling on Defendant's Motion to Dismiss and Memorandum of United States District Court, District of Connecticut, Hon. Robert C. Zampano	23a
Opinion of the Second Circuit Court of Appeals	25a

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
4/20	Complaint, filed.
"	Motion for Preliminary Injunction, filed.
"	Order to Show Cause and Temporary Restraining Order, issued, for April 26, 1971 at 2:00 P.M. in Bridgeport. ZAMPANO, J. M-4/21/71.
4/26	Motion to Dismiss, filed by Defendants Cotter and Johnson.
"	Motion to Dismiss, filed by Defendant Evans.
5/	Ruling Granting Defendants' Motion to Dismiss, entered. ZAMPANO, J. Copies mailed to Messrs. Trotta, Mulcahy and Hirtle. M-5/4/71. Copies to WHT, MJB, and TEC.

VERIFIED COMPLAINT

STATEMENT AS TO JURISDICTION

1. The plaintiff brings this action to secure a temporary and permanent injunction to restrain the above-named defendants from administering, enforcing and executing Sections 54-47 and 54-47 (a) Conn. Gen. Sta's. (Ex. A annexed

hereto) and to enjoin the operation and execution of said statutes, as violative to and an abridgement of the plaintiff's constitutional guarantees against abridgement of freedom of speech, of the Amendments to the United States Constitution, Article 1 as effectuating an unreasonable search and seizure and Amendments to the United States Constitution Article 4, against threatening to impose cruel and unusual punishment in violation of the Amendments to the United States Constitution, Article 8, and Article 14, Section 1, and Article 5 which will hereinafter more fully appear.

2. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. Sections 1343 (3), 2201, 2202, 2281, 2284 and 42 U.S.C. 1981, 1983 and 1988 and 2000A-6.

3. The plaintiff is a citizen of the United States residing in Bridgeport, Connecticut, and paying income taxes and other state and local taxes.

4. The defendant, John P. Cotter is Chief Court Administrator appointed by the governor under the provisions of Section 51-2 Connecticut General Statutes to serve as the "Administrative director of the judicial department and responsible for the efficient operation thereof and of its constituent courts as defined in Sec. 51-1, and for the expeditious dispatch of litigation therein and the proper conduct of the business of said courts". He is nevertheless delegated significant powers and duties with regard to said investigation into the commission of crimes under 54-47.

5. Defendant John P. Evans is assisting in the conduct of said investigation under the title of "Chief Circuit Court Prosecutor", alluded to in sections 54-47 and 54-47 (a).

6. Defendant Sidney A. Johnson is a retired superior court judge appointed by Defendant Cotter to serve as a state referee and to conduct said "One-Man Grand Jury" investigation pursuant to said statutes.

II Factual Allegations

7. Said investigation or inquiry commenced on or about October, 1970 in Trumbull, Connecticut as ordered by Defendant, Cotter, pursuant to 54-47 of the Connecticut General Statutes and still remains in progress being conducted by Defendant Johnson and Defendant Evans together with members of his staff.

8. Numerous witnesses, including Plaintiff have been subpoenaed to appear, testify and produce evidence at said investigation.

9. On April 14, 1971 plaintiff was served with a subpoena (see Subpoena re: exhibit B) and promptly retained counsel who filed with the Superior Court at Bridgeport and the Second Circuit Court at Bridgeport both on April 15, 1971 a motion to vacate and quash the subpoena alleging many of the constitutional infirmities hereinafter recited.

10. Said Motion to Quash said Subpoena has no privileged status and plaintiff will have no prior hearing to test the sufficiency of same prior to his ordered attendance on April 21, 1971.

11. Plaintiff's counsel contacted defendant Evans and obtained a two day postponement, the original date of appearance prior to postponement having been April 19, 1971.

12. Without any benefit of hearing plaintiff will be compelled to attend and give evidence against himself as called for by said subpoena, but, without benefit of counsel, since at no time have counsel at prior proceedings been permitted entry into said hearing room.

13. Previous witnesses, through their attorneys have petitioned the Superior Court at Bridgeport for the State of Connecticut for redress by way of prohibition, Motions to Quash and Vacate similar subpoenas fully applying the Court's claim it had no jurisdiction in the matter thereby making it impossible for prior witnesses to obtain any adjudication on the merits regarding the validity of subpoena or other grave constitutional questions. (Anthony Salvaggio vs Hon. John Cotter, et al, U.S. District Court of Conn. File No: B.232) Paragraphs 15 and 16.

14. Said one man Grand Jury has followed the following procedure, and plaintiff has no reason to believe it will not follow the same in his case, witnesses have been brought to the hearing room, interrogated and when they had seen fit to invoke the rights of the Fifth Amendment they were removed to another location whereupon they granted immunity to the witness to exercise the Fifth Amendment privilege in jeopardy of incarceration and/or fine or contempt of court.

15. The aforesaid procedure is done purposely and with malice in relatively rapid time thereby denying a witness an opportunity to seek a proper adjudication before any tribunal, state, or federal, and for the distinct purpose of having any reasonable opportunity to a hearing in any state court in Connecticut, which has denied any jurisdiction, except to defend himself against a contempt hearing should he continue to exercise his constitutional privileges.

16. Because of his constitutional objections, fully set forth herein, plaintiff intends to exercise his 5th Amendment privilege at said time and place and in addition thereto after any immunity grant, which will most certainly be deferred.

17. The plaintiff thereby will be refused, as have others before him, to determine the validity of the Immunity Statute, the extent of the Immunity Statute, or the constitutional validity of a statute which purports to strip the core of individuals constitutional safeguards.

18. In view of the foregoing, plaintiff is now confronted with an imminently clear and present danger of incarceration. Compounding such peril is the fact that, should plaintiff not see fit to relinquish his 5th Amendment rights he may be imprisoned for an indeterminable, indefinite and unspecified period of time, conceivably for years, due principally to the fact that the statutes does not provide limits for the life or duration of the "One-Man Grand Jury".

III Causes of Action

19. *First Count:* Said subpoena is attached hereto and made Exhibit "A", has ordered plaintiff to testify concerning any knowledge, involvement or interest he may have directly or indirectly relative to felonious crimes of violence, and gambling including policy playing, or "numbers" pool selling, betting on horse races, gaming, keeping or frequenting a gaming house, keeping gaming equipment, lottery prohibited, baseball or football pools, sale or lease of pool implements, any legal loans, corruption and bribery. Said subpoena clearly and on its face, demands plaintiff to testify regarding his personal

involvement in a crime contained in violation of his rights under the Fifth Amendment.

20. *Second Count:* Said statutes and the administration, execution and enforcement thereof by the defendants abridges the plaintiff of speech in violation of the First Amendment in that it forces him under penalty of incarceration to refrain from availing himself of the Fifth Amendment privilege.

21. *Third Count:* Said statutes and the administration, execution and enforcement thereof by the defendant denies the plaintiff his protection under the Fourth Amendment in that it purports to make an unreasonable search of his person in the form of his mental capacity, knowledge, and inner most thoughts and processes.

22. *Fourth Count:* The plaintiff's constitutional right under Article 5 has been abridged by said subpoena which orders him to give evidence against himself, thereby making the issuance of said subpoena an unconstitutional process.

23. *Fifth Count:* The very real probability of the purported "immunity" alluded to in Section 54-47 (a) does not afford the plaintiff equal protection from that which it purports to strip him of, in that, under the Fifth Amendment the plaintiff may be a *passive witness* by merely declining to testify whereas under the Section which replaces the Fifth Amendment 54-47 (a) plaintiff must take an active participation in extremely distinct different and radically opposite position from that of the Fifth Amendment. The plaintiff is further exposed to the possibility and probability of perjury and/or contempt of court by virtue of said immunity statute whereas under his Fifth Amendment right he is exposed to neither.

24. *Sixth Count:* The very imminent danger of incarceration either by testimony or immunity for an indeterminate period of time, since the one man grand jury, no statutory limitation on its duration.

25. *Seventh Count:* Said proceeding apprised the defendant of his constitutional right under Article 6 in that while it purports to be an investigatory body its function has been accusatory and its ultimate recommendation will be for prosecution of certain individuals who have appeared. The plaintiff has no way of knowing what evidence has been presented prior to his attendance or what evidence will be presented subsequent to his attendance and thereby has not and will not be confronted with witnesses against him nor have the right of cross-examination for assistance of counsel.

26. *Eighth Coint:* The statutes under which said hearing has been conducted and said subpoena issued, immunity conferred, are in violation of the plaintiff's constitutional rights under Article 13 in that said hearing would purport to press him into involuntary servitude under penalty of incarceration, for failure to render services unto the One Man Grand Jury in the form of his physical ability to speak, his intellect, his knowledge, all involuntarily and against his will. The rights which plaintiff enjoyed under the Fourteenth Amendment are in imminent danger of violation by virtue of substantial danger of incarceration should immunity be conferred after plaintiff has exercised his rights under the Fifth Amendment and continues to so exercise said rights.

IV Other Allegations

27. This suit involves a genuine case or controversy between the plaintiff and the defendants.

28. The plaintiff has no plain, speedy or adequate remedy at law.

29. As hereinbefore set forth, said statutes and the Defendants' administration, operation and execution thereof have caused the plaintiff to suffer irreparable injury and will continue to cause further such injury and that as a direct result thereof, plaintiff may be specifically accused of a criminal violation, arrested, incarcerated, all of which he would be forced to sustain without redress or appeal to any courts in the State of Connecticut, unless he were stouthearted enough to place his liberty in jeopardy and risk either contempt of court for failing to appear or for failing to answer questions.

V Prayers For Relief

30. The plaintiff prays that a three judge court be convened as provided in Title 28 U.S.C. 2281, 2284 and that said court grant the following relief:

1. Sections 54-47 and 54-47 (a) Connecticut General Statutes and the actions and determinations of defendants pursuant thereto as to this plaintiff be adjudged and declared unconstitutional.

2. That the Court enjoin the defendant and each of them and their agents, servants and other persons acting in concert or participation with them from conducting or otherwise participating in said investigation and from taking in any manner

any further action with regard to plaintiff's testimony or his appearance.

3. That a preliminary injunction pending the trial of the issues be granted to the plaintiff against the defendant for the relief prayed herein.

4. That pending hearing upon the preliminary injunction, the defendants be restrained along with their agents, servants and other persons acting in concert or participation with them in the manner aforesaid, on the ground that immediate or irreparable loss or damage will result in the interim.

5. That the plaintiff be granted such other and further relief as to the Court may seem just and proper.

JOSEPH F. TROTTA
Attorney for Plaintiff
MICHAEL PUGLIA a/k/a MICKEY POOLE
Plaintiff

(Jurat omitted in printing.)

CERTIFICATE OF COUNSEL

1. I am a Member of the Bar of this Court, having been admitted to Practice on July 7, 1958 at the New Haven Seat of this Court.

2. I am the Attorney for Michael Puglia a/k/a Mickey Poole and am personally familiar with all proceedings herein.

3. I make this Certificate in compliance with Paragraph 4 of the Assignment Rule of this Court on August 24, 1970.

4. The similar relief sought in the Application to which this Certificate is attached has been applied for to a Judge of the

Superior Court for the State of Connecticut as follows: Motion to Quash, the plaintiff not getting a hearing notice yet and hearing date, if ever, is unknown at present. Other counsel have taken several other actions all to no avail and affidavits thereof remain on file in this Court with a case similar and under the same one-man grand jury hearing and statutes, named Anthony Salvaggio, plaintiff vs. The Honorable John P. Cotter, Chief Court Administrator, et al. File No. B-232 for the U.S. District Court for the District of Connecticut.

5. As an Officer of this Court I represent that the following information is intended to provide a factual basis upon which a Judge of this Court may determine whether a preference should be granted in consideration or assignment for hearing of the instant application, particularly with relation to the priorities to which the criminal or civil business of this Court is entitled.

JOSEPH F. TROTTA
900 Chapel Street
New Haven, Connecticut 06510
787-6756

AFFIDAVIT OF JOSEPH F. TROTTA

The undersigned, being duly sworn deposes and says:

1. On April 15, 1971 I was engaged to represent the plaintiff as a result of a subpoena served upon him on April 14, 1971 ordering him to appear at the Town Hall in Trumbull, Connecticut where a One Man Grand Jury was being conducted.

2. On April 15, 1971 a Motion to Quash the Subpoena, the original of which has heretofore been filed in the Office of the Clerk of the Superior Court in Bridgeport and the Office of the Clerk of the Second Circuit Court in Bridgeport.

3. Said Motion has not been heard nor will in the immediate future be heard to the best of my knowledge and belief.

4. The plaintiff is without any recourse to any court in the State of Connecticut for the purpose of obtaining a hearing on the validity of said subpoena for attendance prior to the date ordering him to appear, or the constitutionality of said proceedings.

JOSEPH F. TROTTA
Attorney

(Jurat omitted in printing.)

MOTION FOR PRELIMINARY INJUNCTION

The Petitioner herein requests that the Court issue a preliminary injunction restraining and preventing the defendants and their servants, agents and employees from proceeding further against the plaintiff until a resolution of this matter be made.

JOSEPH F. TROTTA
Attorney

AFFIDAVIT OF JOSEPH F. TROTTA

The undersigned being duly sworn deposes and says:

1. On April 19, 1971 at the hour of approximately 7 p.m. I did converse with and give notice to John P. Evans of my intention to claim a temporary restraining order.

2. I did further indicate to said John P. Evans of my intention to be present on April 20, 1971 at approximately 10 a.m. in the United States District Courthouse at 575 Broad Street, Bridgeport, Connecticut for the specific purpose of obtaining said temporary restraining order and injunction.

JOSEPH F. TROTTA
Attorney

(Jurat omitted in printing.)

ORDER

Based upon the verified complaint of the petitioner and the affidavit in support of the Motion for a Preliminary Injunction hereto attached, the petitioner does hereby request that this Court issue an order to show cause as to why a Preliminary Injunction should not issue to restrain and prevent the defendants, their agents or employees from proceeding any further until a resolution of this matter.

SUBPOENA OF PLAINTIFF

STATE OF CONNECTICUT

JUDICIAL INVESTIGATION

(Under Sec. 54-47, G.S., as Amended)

To any proper officer, or indifferent person, to serve and return.

To: Michael Puglia, a/k/a Mickey Poole
209 Brion Dr.
Fairfield, Conn.

BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby COMMANDED to appear before a JUDICIAL INVESTIGATION, to be held at the town set forth below, on the Appearance Date set forth below, at 10 A.M., and to such day thereafter and within thirty days hereof on which said INVESTIGATION is legally to be conducted, to testify in the below entitled matter, then and there pending, concerning any knowledge, involvement or interest you may have directly, or indirectly, relative to felonious crimes of violence, and gambling, including policy playing, or "numbers", pool selling, betting on horse race, gaming, keeping or frequenting a gaming house, keeping gaming equipment, lotteries prohibited, baseball or football pools, sale or lease of pool implements, and illegal loans, corruption and bribery; said crime or crimes being within the jurisdiction of the Circuit Court of the State of Connecticut.

☐ And you are further commanded to bring with you:

HEREOF FAIL NOT, UNDER PENALTY OF THE LAW.

Judicial Investigation Sec. 54-47-G.S., as amended	Circuit No 2	To be held at: Trumbull	On: (Appearance date) April 19, 1971
Street Address of Court	Date of Subpoena:	Signature (Commissioner of Superior Court)	
5866 Main St.	4-12-71	s/ — Unknown — original in court. Chief Prosecuting Attorney	

A TRUE COPY ATTEST *(Signature) (Deputy Sheriff, Constable, Policeman of State, City or Town of)*
s/ — Unknown — original in court.

AND FICER

ENDORSEMENT

16a

Street Address of Court	Date of Subpoena:	Signature (Commissioner of Superior Court)
		s/ — Unknown — original in court.
5866 Main St.	4-12-71	Chief Prosecuting Attorney

ENDORSEMENT AND RETURN OF OFFICER

A TRUE COPY ATTEST *(Signature) (Deputy Sheriff, Constable, Policeman of State, City or Town of)*
s/ — Unknown — original in court.

AT *(Town)*	ON *(Date)*	WITNESS FEES	SERVICE	TRAVEL	ENDORSEMENT
Bridgeport	4/14/71			$1.00	

Then and by virtue hereof, I read the within subpoena in the presence and hearing of each of the within named witnesses—
EXCEPT *(name any witness not served)*

ATTEST *(Deputy Sheriff, Constable, Policeman of State, City or Town of)*
s/. — Unknown — original in court.

NOTICE TO THE PERSON SUMMONED: Your witness fees will be paid by the officer serving this subpoena. If you do not appear on the day and at the time stated, or on the day and at the time to which your appearance may have been continued by order of an officer of the court, you may be subject to arrest.

Witness fees received in the amount of $_____;

WITNESS

CONNECTICUT GENERAL STATUTES
54-47, 54-47A

§ 54-47. Investigations into commission of crime

(a) Whenever it appears to the superior court for any county that the administration of justice requires an investigation to determine whether or not there is probable cause to believe that a crime or crimes have been committed within the county, said court may order an inquiry to be made into the matter, to be conducted before any judge of said court or a state referee designated by it.

(b) The chief prosecuting attorney for the circuit court may apply to the chief court administrator for an order that an inquiry be made to determine whether or not there is probable cause to believe that a crime or crimes within the jurisdiction of the circuit court have been committed. If the chief court administrator is satisfied from the application and any other papers or evidence submitted in support thereof that the administration of justice requires such an inquiry, he shall order that it be made and shall appoint a state referee or, after consultation with the chief judge of the circuit court, any three judges of said court to conduct the inquiry, with the assistance of the office of the chief prosecuting attorney. If it appears to the chief court administrator that the matters to be investigated are such as are usually prosecuted in the superior court, he may appoint a judge of the superior court or a state referee to conduct the inquiry and direct the state's attorney for the county to assist such judge or referee in the conduct of the inquiry.

(c) Such inquiries shall be conducted in public or private as said court or chief court administrator orders. The attend-

ance of witnesses and the production of documents at such inquiries may be compelled by subpoena, signed by any official authorized to issue such process. If any witness properly summoned fails to appear or to produce any documents included in such subpoena, or if he fails to answer any proper question, the judge or referee conducting such inquiry may report the matter to the state's attorney for the county wherein the investigation is being conducted and such state's attorney may file a complaint setting forth the facts at any criminal session of the superior court in such county. The court shall thereupon issue a citation to such witness to appear before said court and show cause why he should not be punished as for a contempt, and if, after hearing, the court finds that he fails to appear without due cause or failed to produce any document properly to be presented to the judge or state referee conducting the investigation or failed to answer any proper question in the course of such investigation, it may punish him as it might a witness failing to appear, to produce a document properly to be considered or to answer a proper question before the court. Witnesses may be examined by the judge or state referee conducting the inquiry, by the state's attorney or chief prosecuting attorney or by any other attorney or attorneys appointed by the court for such purpose. The official stenographer of such superior or circuit court or his assistant shall record any testimony so taken. At the conclusion of such inquiry the judge or referee conducting the same shall file with the court a report and the court shall direct whether, and to what extent, such report shall be made available to the public or interested parties. Any transcript of testimony taken at such inquiry shall likewise be filed with the court and it shall have the same powers with reference to it as it has with

reference to the report; provided any person accused of crime as a result of such inquiry shall have access at all reasonable times to the transcript of his own testimony given by him in such inquiry.

§ 54-47a. Compelled testimony of witnesses or production of evidence subject to claim of privilege of self-incrimination in proceedings involving narcotics, gambling or felonious crimes of violence. Immunity from prosecution

Whenever in the judgment of a state's attorney or the chief prosecuting attorney of the circuit court the testimony of any witness, or the production of books, papers or other evidence of any witness, in any criminal proceeding involving narcotics, gambling or felonious crimes of violence, before a court or grand jury of this state, is necessary to the public interest, the state's attorney, or the chief prosecuting attorney of the circuit court, may, with notice to the witness, after the witness has claimed his privilege against self-incrimination, make application to the superior or circuit court for an order directing the witness to testify or produce evidence subject to the provisions of this section. Upon the issuance of such order such witness shall not be excused from testifying or from producing books, papers or other evidence in such case or proceeding on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled to testify or produce evidence, and no testimony or evidence so compelled, and no evidence discovered as a result of or otherwise derived

from testimony or evidence so compelled, shall be used as evidence against him in any proceeding, except that no witness shall be immune from prosecution for perjury or contempt committed while giving such testimony or producing such evidence. Whenever evidence is objected to as inadmissible because it was discovered as a result of or otherwise derived from compelled testimony or evidence, the burden shall be upon the person offering the challenged evidence to establish a source independent of the compelled testimony or evidence.

(1969, P.A. 631, § 1.)

MOTION TO DISMISS

The defendants, The Honorable John P. Cotter, Chief Court Administrator, and the Honorable Sidney A. Johnson, State Referee, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, hereby move the Court to dismiss the Complaint for the following reasons:

1. The Complaint fails to state a claim against the defendants upon which relief can be granted.

2. The allegations of the Complaint are insufficient in law and in fact to show the jurisdiction of the Court.

Dated at Hartford, Connecticut this 26th day of April, 1971.

Defendants,
THE HONORABLE JOHN P. COTTER and
THE HONORABLE SIDNEY A. JOHNSON
By: ROBERT K. KILLIAN
Attorney General

ROBERT L. HIRTLE, JR.
Assistant Attorney General
30 Trinity Street
Hartford, Connecticut 06115

Service certified pursuant to
Rule 12a F.R.C.P.
ROBERT L. HIRTLE, JR.
Assistant Attorney General
30 Trinity Street
Hartford, Connecticut 06115

MOTION TO DISMISS

The defendant, John P. Evans, pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure, hereby moves the Court as follows:

1. To dismiss this action because of lack of jurisdiction over the subject matter under Title 28, United States Code, Section 2201; and or, Title 42, United States Code, Section 1983.

2. To dismiss this action because the complaint fails to state a claim upon which relief can be granted.

3. To dismiss this action because the complaint fails to state a substantial Federal question.

Defendant, John P. Evans
By: JOHN F. MULCAHY, JR.
Deputy Chief Prosecutor
Post Office Box P
Amity Station
New Haven, Conn. 06525

(Certification dated April 26, 1971, omitted in printing.)

RULING ON DEFENDANTS' MOTION TO DISMISS

In this action the plaintiff seeks declaratory and injunctive relief with respect to certain proceedings presently pending before a one-man grand jury of the State of Connecticut, Conn. Gen. Stat. §§ 54-47 and 54-47a, and moves for the convocation of a three-judge district court under 28 U.S.C. § 2281. It is alleged that the action is authorized by the Civil Rights Act, 42 U.S.C. § 1983, and that jurisdiction is present under 28 U.S.C. § 1343.

The complaint states in pertinent part that the plaintiff has been subpoenaed to testify before the grand jury as to his "knowledge, involvement or interest . . . directly or indirectly relating to felonious crimes of violence, and gambling"; that he intends to exercise his Fifth Amendment privilege against self-incrimination, that he anticipates that he thereupon will be granted immunity under the immunity laws of the State;

and that he therefore will be required to testify or be punished for contempt. The plaintiff contends that these state proceedings will violate his rights under the First, Fourth and Fifth Amendments and subject him to involuntary servitude. The defendants move, pursuant to Rule 12(b), Fed. R. Civ. P., to dismiss the complaint for failure to state a cause of action and for lack of jurisdiction.

It is settled law that when an application for a three-judge district court is submitted under 28 U.S.C. § 2281, the single judge shall examine the jurisdictional grounds relied on and determine whether the plaintiff's claim of unconstitutionality is substantial. *California Water Service Co.* vs. *City of Redding*, 304 U.S. 252, 255 (1938); *Utica Mutual Ins. Co.* vs. *Vincent*, 375 F.2d 129, 130-31 (2 Cir.), *cert. denied*, 389 U.S. 839 (1967); *Smith* vs. *State of California*, 336 F.2d 530, 534 (9 Cir. 1964); *Green* vs. *Board of Elections of City of New York*, 259 F. Supp. 270 (S.D.N.Y. 1966), *aff'd*, 380 F.2d 445, 448 (2 Cir. 1967), *cert. denied*, 389 U.S. 1048 (1968).

It seems clear to the Court that the main issues presented in this action were raised and rejected in a strikingly similar case in this District, *Salvaggio* vs. *Cotter*, Civil No. B-232 (D. Conn. March 17, 1971). In that matter Judge T. Emmet Clarie in a comprehensive opinion upheld the constitutionality of the State's one-man grand jury system and immunity statutes, declined to grant declaratory and injunctive relief, and dismissed the action. Judge Clarie's reasoning in *Salvaggio* controls the disposition of the instant case. See also *Perez* vs. *Ledesma*, —— U.S. —— (February 23, 1971); *Younger* vs. *Harris*, —— U.S. —— (February 23, 1971); *Boyle* vs. *Landry*, —— U.S. —— (February 23, 1971).

Accordingly, the defendants' motion to dismiss is granted.

Dated at New Haven, Connecticut, this 4th day of May, 1971.

ROBERT C. ZAMPANO
United States District Judge

OPINION

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 127—September Term, 1971.

(Argued September 27, 1971 Decided September 27, 1971.)

Docket No. 71-1602

MICHAEL PUGLIA,
Plaintiff-Appellant

—against—

THE HONORABLE JOHN P. COTTER, CHIEF COURT ADMINISTRATOR; JOHN P. EVANS, ESQ., ACTING CHIEF CIRCUIT COURT PROSECUTOR; and THE HONORABLE SIDNEY A. JOHNSON, STATE REFEREE,

Defendants-Appellees.

Before:

LUMBARD, MANSFIELD and OAKES,
Circuit Judges.

Appeal from an order of the United States District Court for the District of Connecticut, Robert C. Zampano, J., dismissing a complaint seeking injunctive relief on the ground that the examination of plaintiff by a one-man grand jury under a grant of immunity pursuant to Connecticut statutes violates plaintiff's constitutional rights.

Affirmed.

JOSEPH F. TROTTA, Esq., New Haven, Conn. (Trotta, Trotta & Trotta, New Haven, Conn., on the brief), for *Appellant*.

ROBERT L. HIRTLE, JR., Assistant Attorney General, Hartford, Conn. (Robert K. Killian, Attorney General, Hartford, Conn., on the brief), *for Appellees*.

PER CURIAM:

We affirm in open court on the opinion of Judge Zampano (D. Conn. May 4, 1971), except that Judge Oakes limits his concurrence to non-constitutional grounds.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-797

MICHAEL PUGLIA,

Plaintiff - Petitioner,

v.

THE HON. JOHN P. COTTER,
THE HON. SIDNEY A. JOHNSON,
AND JOHN P. EVANS

Defendants - Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

ROBERT K. KILLIAN
Attorney General

RAYMOND J. CANNON
Assistant Attorney General

DANIEL R. SCHAEFER
Assistant Attorney General

Attorneys for Respondents
Cotter and Johnson
30 Trinity Street
Hartford, Connecticut

INDEX

	Page
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	2
ARGUMENT	
I. Federalism Requires That Pending State Criminal Inquiries Not Be Restrained By Federal Courts.	3
II. The Complaint Fails To State A Cause of Action In That It Is A Hypothetical Situation And Fails To Raise Any Substantial Question.	8
CONCLUSION	11
CERTIFICATE OF SERVICE	12

CITATIONS

CASES:	Page
Alabama Power Co. v. *Ickes*, 302 U.S. 464 (1937)	8
Atlantic Coastline Railroad Company v. *Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970)	6
Blair v. *United States*, 250 U.S. 273 (1919)	4
Cameron v. *Johnson*, 390 U.S. 611 (1968)	4
Cobbledick v. *United States*, 309 U.S. 323 (1940)	8
Copland v. *O'Connor*, 306 F. Supp. 375 (N.D. Calif. 1969)	4
Dombrowski v. *Pfeister*, 380 U.S. 479 (1965)	4
Douglas v. *City of Jeannette*, 319 U.S. 157 (1943)	4
Dyson v. *Stein*, 401 U.S. 200 (1971)	7
Gardner v. *Broderick*, 392 U.S. 273 (1968)	9
Hemans v. *United States*, 163 F.2d 228 (1947), cert. den. 332 U.S. 801	6
Hill v. *Martin*, 296 U.S. 393 (1935)	6
Jenkins v. *McKeithen*, 395 U.S. 411 (1969)	4, 6
Johnson v. *Lee*, 281 F. Supp. 650 (D. Conn. 1968)	3, 4
Karen v. *East Haddam*, 146 Conn. 720, 155 A.2d 921 (1959)	8
In re Kittle, 180 Fed. 946 (C.C.S.D. N.Y. 1910)	9
McLucas v. *Palmer*, 309 F. Supp. 1353 (D. Conn. 1970), aff'd., 427 F.2d 239 (2d Cir. 1970) per curiam, cert. den. 399 U.S. 937	3, 4

Murphy v. *Waterfront Commission*, 378 U.S. 52 (1964) 9

National Land & Investment Co. v. *Specter*, 304 F. Supp. 1004 (E.D. Penn. 1969), affirmed 428 F.2d 91 (3d Cir. 1970) 4

Nichols v. *Vance*, 293 F. Supp. 680 (S.D. Tex. 1968) 4

Perez v. *Ledesma*, 401 U.S. 82 (1971) 7

Polk v. *Ellington*, 309 F. Supp. 1349 (W.D. Tenn. 1970) 4

Salvaggio v. *Cotter, et al*, 324 F. Supp. 681 (D. Conn. 1971) 3, 4, 10

Samuels v. *Mackell*, 401 U.S. 66 (1971) 4, 7

Sheridan v. *Garrison*, 415 F.2d 699 (5th Cir. 1969) 4

Society of Good Neighbors v. *Groat*, 77 F. Supp. 695 (E.D. Mich. 1948) (three-judge court) 6

State v. *Kemp*, 126 Conn. 60, 9 A.2d 63 (1939) 9

Stefanelli v. *Minard*, 342 U.S. 117 (1951) 3, 5

Tileston v. *Ullman*, 318 U.S. 44 (1943) 8

Toucey v. *New York Life Ins. Co.*, 314 U.S. 118 (1941) 6

United States v. *Cahn*, 282 F. Supp. 274 (E.D. N.Y. 1968) 4, 6

Warner v. *Andrews*, 5 Conn. Sup. 63 (1937) 7

Younger v. *Harris*, 401 U.S. 37 (1971) 4, 7, 11

STATUTES AND COURT RULES:

28 U.S.C. § 2283 5

Act of March 2, 1793, C. 22 1 Stat. 333, 334 5

Rule 12(b) F.R.C.P. 2

Sec. 54-45, Conn. Gen. Stat. 8

Sec. 54-47, Conn. Gen. Stat. 2

Sec. 54-47a, Conn. Gen. Stat. 2, 3

Sec. 54-47(c), Conn. Gen. Stat. 10

Public Act No. 860 (Jan. Reg. Sess. 1971) 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-797

MICHAEL PUGLIA,

Plaintiff - Petitioner,

v.

THE HON. JOHN P. COTTER,
THE HON. SIDNEY A. JOHNSON,
AND JOHN P. EVANS

Defendants - Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT OF ISSUES

Do the following questions warrant a granting of a petition of certiorari when both the District Court and the Court of Appeals found such questions to lack any merit:

1. Where a State inquiry into crime has been convened by a Supreme Court Justice pursuant to statute may a witness have such inquiry enjoined by resort to the Civil Rights Act?

2. Where state statutes provide that upon claiming the privilege against self-incrimination at such inquiry by a witness, such witness be granted full transactional immunity before he can be ordered to testify at the inquiry, and where the witness has not yet claimed such privilege, can he have the inquiry enjoined by resort to the Civil Rights Act?

3. Can such witness deliberately bypass his remedy of defending against any proceeding which would arise out of his refusal to testify before such inquiry, as well as his remedy of immunity above, by claiming among other things that the inquiry is an unreasonable search and seizure of his mind and would subject him to involuntary servitude?

STATEMENT OF THE CASE

This is a petition for certiorari to the United States Court of Appeals for the Second Circuit affirming a decision of the United States District Court for the District of Connecticut (Robert C. Zampano, Judge) dismissing plaintiff's action for an injunction and declaratory judgment requesting the impanelling of a three-judge District Court to determine the constitutionality of Sections 54-47 and 54-47a, Connecticut General Statutes, Revised to 1969.

On May 4, 1971 the District Court dismissed the action on motion of the defendants for failure to state a cause of action and for lack of jurisdiction pursuant to Rule 12 (b), F.R.C.P.

The United States Court of Appeals for the Second Circuit affirmed on September 27, 1971.

STATEMENT OF FACTS

There is no dispute as to the relevant facts. On April 14, 1971, the plaintiff was served with a subpoena to appear on April 19, 1971 before a judicial investigation being conducted by the Hon. Sidney A. Johnson, State Referee, to testify regarding his knowledge, involvement, or interest relative to gambling and felonious crimes of violence.

A two-day postponement was obtained by the plaintiff and on April 20, 1971 an ex-parte Temporary Restraining

Order was issued by the District Court together with a show cause order to be held on April 26, 1971. At the show cause hearing the defendants moved to dismiss.

It is significant that the plaintiff sought the ex-parte order before appearing at the inquiry and without even first claiming his privilege of self-incrimination at such inquiry. As noted by the District Court in its ruling, plaintiff "anticipated" that he would be granted immunity under Sec. 54-47a of the General Statutes. Such immunity would embrace "any transaction, matter or thing concerning which he is compelled to testify or produce evidence. . . ." Sec. 54-47a.

ARGUMENT

I.

Federalism Requires That Pending State Criminal Inquiries Not Be Restrained By Federal Courts.

It is well recognized that a three-judge court must be denied and the action dismissed where the Complaint fails to raise substantial federal questions. *Johnson* v. *Lee*, 281 F. Supp. 650, 654 (D. Conn. 1968). The Complaint is insubstantial where it obviously lacks merit or is clearly unsound because of previous court decisions. See *Salvaggio* v. *Cotter*, et al, 324 F. Supp. 681 (D. Conn. 1971).

Fundamental principles of federalism require that a federal court not interfere in the administration of criminal justice in the State courts except in the most extraordinary circumstances. *Stefanelli* v. *Minard*, 342 U.S. 117, 120 (1951); *McLucas* v. *Palmer*, 309 F. Supp. 1353 (D. Conn. 1970), aff'd., 427 F. 2d 239 (2d Cir. 1970) per curiam, cert. den. 399 U.S. 937.

The narrow area where federal jurisdiction is recognized is limited to bad faith prosecutions and improper abridgement

of First Amendment rights. *Cameron* v. *Johnson*, 390 U.S. 611 (1968); *Younger* v. *Harris*, 401 U.S. 37 (1971); *Samuels* v. *Mackell*, 401 U.S. 66 (1971); and *Salvaggio* v. *Cotter*, et al, supra. See also *Dombrowski* v. *Pfeister*, 380 U.S. 479 (1965); *Sheridan* v. *Garrison*, 415 F. 2d 699 (5th Cir. 1969); *Polk* v. *Ellington*, 309 F. Supp. 1349, 1350, 1351 (W.D. Tenn. 1970).

Because of the absence of bad faith and abridgement of free speech, federal courts have refused to enjoin state grand jury proceedings specifically. *National Land & Investment Co.* v. *Specter*, 304 F. Supp. 1004, 1010-1011 (E.D. Penn. 1969), affirmed, 428 F. 2d 91 (3d Cir. 1970). See *United States* v. *Cahn*, 282 F. Supp. 275, 278 (E.D.N.Y. 1968). The *Specter* case explicitly held that similar allegations of "denial of counsel", lack of cross-examination and broad scope of investigation did not justify a federal injunction. 304 F. Supp. at 1012-1013. See also *Jenkins* v. *McKeithen*, 395 U.S. 411, 430 (1969); *Blair* v. *United States*, 250 U.S. 273, 282 (1919).

Furthermore, criminal proceedings can be enjoined only where there is a clear danger of irreparable injury both great and immediate. No person is immune from prosecution in good faith for alleged criminal acts even though he claims constitutional infirmities. *Younger* v. *Harris*, supra; *Douglas* v. *City of Jeannette*, 319 U.S. 157, 163-164 (1943). Special circumstances beyond this are required. *Cameron* v. *Johnson*, supra, 390 U.S. 618; *United States* v. *Cahn*, supra, 282 F. Supp. 278; *Nichols* v. *Vance*, 293 F. Supp. 680, 683 (S.D. Tex. 1968).

There are adequate remedies in this case including show cause hearings, writs of prohibition and normal state criminal process and appellate procedure, eventual application to the United States Supreme Court if necessary and proper, as well as state and federal habeas corpus proceedings. See *Johnson* v. *Lee*, supra, 281 F. Supp. 656; *McLucas* v. *Palmer*, supra, 309 F. Supp. 1358; *Copland* v. *O'Connor*, 306 F. Supp. 375, 377 (N.D. Calif. 1969).

Thus as noted in *Stefanelli*, supra, at 123:

> "If we were to sanction this intervention, we would expose every State criminal prosecution to insupportable disruption. Every question of procedural due process of law — with its far-flung and undefined range — would invite a flanking movement against the system of State courts by resort to the federal forum, with review if need be to this Court, to determine the issue. Asserted unconstitutionality in the impanelling and selection of the grand and petit juries, in the failure to appoint counsel, in the admission of a confession, in the creation of an unfair trial atmosphere, in the misconduct of the trial court—all would provide ready opportunities, which conscientious counsel might be bound to employ, to subvert the orderly, effective prosecution of local crime in local courts. To suggest these difficulties is to recognize their solution."

Title 28 U.S.C., § 2283, provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Almost from the beginning of our judicial history Congress has restricted the grant of injunctions by federal courts to stay state court proceedings. Act of March 2, 1793, C.22, 1 Stat. 333, 334.

> "The Act of 1793 expresses the desire of Congress to avoid friction between the federal government and the state resulting from the intrusion of federal authority

into the orderly functioning of a state's judicial process."

Toucey v. *New York Life Ins. Co.*, 314 U.S. 118, 132 (1941) Frankfurter, J.

Consonant with this purpose, the term "proceedings" is a broad one.

> "That term [proceedings] is comprehensive. *It includes all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final* process. . . . It applies alike to action by the court and by its ministerial officers. . . . Thus the prohibition applies whatever the nature of the proceedings, unless the case presents facts which bring it within one of the recognized exceptions to section [2283]."
>
> *Hill* v. *Martin*, 296 U.S. 393, 403 (1935) (Emphasis added.).

See also *Atlantic Coastline Railroad Company* v. *Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970).

It is settled that grand jury proceedings in general are state court proceedings within the meaning of this statute. *United States* v. *Cahn*, supra, 282 F. Supp. 277. This also applies to one-man grand juries. *Society of Good Neighbors* v. *Groat*, 77 F. Supp. 695 (E.D. Mich. 1948) (three-judge court). That case involves proceedings under closely similar Michigan statutes. In holding a one-man grand jury to be a state court proceeding under statutes comparable to the Anti-injunction Act, the U.S. Court of Appeals for the Sixth Circuit recognized that this investigation constituted a judicial inquiry. *Hemans* v. *United States*, 163 F. 2nd 228, 235, cert. den. 332 U.S. 801. The one-man grand jury in Connecticut certainly meets the definition for the type of proceedings distinguished in *Jenkins*, supra, which merely investigates and re-

ports. It differs only in that it is in this case acting as a direct arm of the court. But this makes the Anti-injunction statute even more pertinent.

The involvement of the State court proceedings is also present in this case because of the service of a subpoena under the authority of the Chief Prosecuting Attorney. See *Warner* v. *Andrews*, 5 Conn. Sup. 63, 65 (1937).

In this respect it is noteworthy that the petition for certiorari refers to the state inquiry in this case as the "Connecticut State Court Proceedings." p. 4.

On the same day [Feb. 23, 1971] as the *Younger* decision, the Supreme Court announced several other decisions of relevance to this action. In *Perez* v. *Ledesma*, 401 U.S. 82 (1971), the Supreme Court set aside an injunction ordered by a three-judge court against a Louisiana criminal statute reaffirming *Younger* in view of the disruptive effect of the injunction on other pending state criminal prosecutions. See also *Dyson* v. *Stein*, 401 U.S. 200 (1971). In *Samuels* v. *Mackell*, supra, the Court held that declaratory relief is also improper when a prosecution involving the challenged statute is pending in state court at the time the federal suit is initiated.

Consonant with the policies against interference with pending state court proceedings is the principle that grand jury proceedings should not be subjected to undue interference.

> "It is no less important to safeguard against undue interruption the inquiry instituted by a grand jury than to protect from delay the progress of the trial after an indictment has been found. Opportunity for obstructing the

'orderly progress' of investigation should no more be encouraged in one case than in the other."

Cobbledick v. *United States,* 309 U.S. 323 at 327 (1940) (Frankfurter, J.).

II.

The Complaint Fails To State A Cause Of Action In That It Is A Hypothetical Situation And Fails To Raise Any Substantial Question.

A person has standing to raise constitutional issues only when his own constitutionally protected rights are affected. *Tileston* v. *Ullman,* 318 U.S. 44 (1943). Furthermore, the right asserted must be a legal right and not just a personal one. *Alabama Power Co.* v. *Ickes,* 302 U.S. 474 (1937); *Karen* v. *East Haddam,* 146 Conn. 720, 155 A. 2d 921 (1959). There must be a substantial and not merely a remote or individual interest involved. It is the present case that we must be concerned with and not some possible or hypothetical one. *Id.*

In this case the plaintiff is neither accused nor threatened with prosecution. He has been summoned only as a witness to appear before a judicial inquiry. The documents submitted by the plaintiff himself show that he is not unfamiliar with his rights.

It is, therefore, clear that under the facts as alleged plaintiff has no standing whatsoever to challenge the activities of Justice Cotter, Judge Johnson and Chief Prosecutor Evans as set out in the Complaint.

From time immemorial grand juries have been subject to overall supervision of the court. They are ordered to be summoned by the Court. Sec. 54-45, Conn. Gen. Stat. (Rev. to 1968). When necessary, the members have been selected by

the court. They need not have laid before it an indictment charging any particular individual with crime, but may investigate whether any crimes have been committed in connection with various matters. See *State* v. *Kemp*, 126 Conn. 60, 64, 66-67, 9 A. 2d 63 (1939). Thus the duties of Justice Cotter in respect to the present inquiry are fully within the judicial power.

As to the duty of inquiry now vested in Judge Johnson, the power of the Court to examine witnesses to ascertain the truth needs no citation of authority.

Plaintiff's claims as to the Fifth Amendment contravene the established decisions of this Court.

> "Answers may be compelled regardless of the privilege [against self-incrimination] if there is immunity from federal and state use of the compelled testimony or its fruits in connection with a criminal prosecution against the person testifying.
>
> *Gardner* v. *Broderick*, 392 U.S. 273, 276 (1968).
> *Murphy* v. *Waterfront Commission*, 378 U.S. 52 at 79 (1964).

See also *In re Kittle*, 180 Fed. 946, (C.C.S.D.N.Y. 1910) ("When so questioned, the witness [who has been granted immunity] must answer." Hand, J.).

Plaintiff's contention of an unreasonable search and seizure of his mind and involuntary servitude are totally devoid of any merit and warrant little discussion. In this case, the record indicates that the subpoena required solely the appearance of the witness. No documents or other effects were summoned. *Gardner* and *Murphy*, supra, make it clear that once adequate immunity is provided, answers may be compelled. Furthermore, if plaintiff's arguments were to be

accepted, then for what purpose was the Fifth Amendment adopted?

In addition, we note that Sec. 54-47 (c) of the General Statutes was amended in 1971 to add the following provision:

"At any such hearing a witness shall have a right to counsel and shall be informed of such right by the of-

Public Act No. 860 (Jan. Reg. Sess. 1971), effective October 1, 1971.

Finally, the remaining claims of the plaintiff have been fully dealt with and dismissed in *Salvaggio* v. *Cotter*, supra.

CONCLUSION

"A federal lawsuit to stop a prosecution in a state court is a serious matter." *Younger* v. *Harris*, supra, 401 U.S. at 42. Although the present proceedings are not an actual prosecution, they can be essential to a prosecution. To award the extraordinary equitable action demanded in this case would first of all delay and disrupt state court proceedings. It could easily bring the federal court into constitutional questions which may later prove to be academic and unnecessary. It can lead to unjustified harassment of state officers including judges who are clearly acting in good faith. Most important, effective state law enforcement would be paralyzed.

It is clear that the rulings below are consonant with the decisions of other Courts of Appeal and also are in full accord with the decisions of the United States Supreme Court.

It is therefore respectfully submitted that the petition for certiorari should be denied.

Respectfully submitted,

ROBERT K. KILLIAN
Attorney General

RAYMOND J. CANNON
Assistant Attorney General

DANIEL R. SCHAEFER
Assistant Attorney General

Attorneys for Respondents
Cotter and Johnson

CERTIFICATE OF SERVICE

I Daniel R. Schaefer, Attorney for the Respondents, the Honorable John P. Cotter, Chief Court Administrator, and the Honorable Sidney A. Johnson, State Referee, certify that on the 10th day of March, 1972, I served a copy of the foregoing Brief by mailing, United States Mail, Postage Prepaid, to the following attorneys of record:

Joseph F. Trotta, 900 Chapel Street, New Haven, Connecticut, 06510; John F. Mulcahy, Jr., Post Office Box P, Amity Station, New Haven, Connecticut, 06525.

DANIEL R. SCHAEFER
Assistant Attorney General

30 Trinity Street
Hartford, Connecticut 06115